

**Actions Should Continue to Be Taken to
Improve Compliance With the Freedom of
Information Act and Related Procedures**

May 2002

Reference Number: 2002-10-093

This report has cleared the Treasury Inspector General for Tax Administration disclosure review process and information determined to be restricted from public release has been redacted from this document.



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

INSPECTOR GENERAL
for TAX
ADMINISTRATION

May 20, 2002

MEMORANDUM FOR CHIEF, COMMUNICATIONS AND LIAISON

A handwritten signature in cursive script, reading "Pamela J. Gardiner".

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Final Audit Report - Actions Should Continue to Be Taken to Improve Compliance With the Freedom of Information Act and Related Procedures (Audit # 200110049)

This report presents the results of our review of denials of written requests to disclose information to taxpayers. The overall objective of this review was to determine if the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing, based on the Freedom of Information Act (FOIA) ¹ exemption (b)(3), in conjunction with Internal Revenue Code (I.R.C.) § 6103 (2001), and/or FOIA exemption (b)(7), or by replying that responsive records did not exist.

In summary, we found that the IRS improperly withheld information from requesters in 10.6 percent of the denied, partially denied, or no responsive record FOIA and Privacy Act (PA) of 1974² requests and 12.2 percent of the I.R.C. § 6103 requests where information was partially or fully denied or requesters were told that records could not be located. In addition, responses to FOIA and PA requesters were not timely in 22.7 percent of the cases in this year's sample. The reasons why the IRS improperly withheld information for FOIA, PA, and I.R.C. § 6103 requests remained consistent over the last 3 years. Additionally, the types of information improperly withheld were similar during the past 3 years.

Management's Response: IRS Disclosure management agreed with the observations made in the draft report. Although we have not made specific recommendations in this report, the management response to the draft report included corrective actions to

¹ 5 U.S.C. § 552 (1994 & Supp. IV 1998).

² 5 U.S.C. § 552a (1994 & Supp. IV 1998).

address the Treasury Inspector General for Tax Administration's concerns. The corrective actions include identifying offices requiring more oversight and providing additional training in those areas, developing a skill assessment plan allowing managers to identify deficiencies and apply corrective actions to improve employee performance, developing formal Integrated Data Retrieval System training, and monitoring the timeliness of responses on a monthly basis. Management's complete response to the draft report is included as Appendix V.

Copies of this report are also being sent to the IRS managers who are affected by the report. Please contact me at (202) 622-6510 if you have questions or Daniel R. Devlin, Assistant Inspector General for Audit (Headquarters Operations and Exempt Organizations Programs), at (202) 622-8500.

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Background

Section 1102 (d)(3)(A) of the Internal Revenue Service (IRS) Restructuring and Reform Act of 1998 (RRA 98)¹ requires the Treasury Inspector General for Tax Administration (TIGTA) to conduct periodic audits of a statistically valid sample of the total number of determinations made by the IRS to deny written requests to disclose information to taxpayers on the basis of Internal Revenue Code (I.R.C.) § 6103 (2001) and/or Freedom of Information Act (FOIA)² exemption (b)(7).

The FOIA requires that records of the Federal Government generally be available to the public upon request, unless specifically exempted. FOIA exemption (b)(3) regulates the release of records specifically exempt from disclosure by statute (e.g., I.R.C. § 6103). The I.R.C. § 6103 controls the release of tax returns and return information and provides a mechanism for taxpayers to request tax returns and return information or request that it be disclosed to a designee. FOIA exemption (b)(7) regulates the release of records or information compiled for law enforcement purposes.

The Privacy Act (PA) of 1974³ contains a provision that prevents Federal Government agencies from relying on any exemption in the PA to withhold from an individual any record that is otherwise available to that individual under the FOIA. As a result, we sampled cases requested under the PA, but partially or fully denied under FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or exemption (b)(7).

The IRS' FOIA Annual Report for Fiscal Year (FY) 2001 showed that of the 34,930 FOIA and PA cases processed, the IRS denied or partially denied 2,792 requests (8.0 percent), and replied that responsive records did not exist for 7,434 requests (21.3 percent). The remaining cases were either granted in full, referred to the agency where the records originated, withdrawn by the requester, or were not

¹ Pub. L. No. 105-206, 112 Stat. 703 § 1102 (d)(3)(A).

² 5 U.S.C. § 552 (1994 & Supp. IV 1998).

³ 5 U.S.C. § 552a (1994 & Supp. IV 1998).

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provided because the request did not meet the criteria in 26 C.F.R. § 601.702 (1998) or for some other miscellaneous reason.

Within the IRS, the Office of Governmental Liaison and Disclosure is responsible for the disclosure program. This office ensures that the IRS complies with the FOIA, PA, and I.R.C. § 6103 requirements; provides national oversight and guidance on procedural and policy matters to field offices; and provides related training.

Disclosure offices process almost all FOIA and PA requests for information received by the IRS. Written requests for information under I.R.C. § 6103 may be processed either by the disclosure offices or by the IRS office that has custody of the requested records.

FOIA, PA, and I.R.C. § 6103 requests received by disclosure offices are controlled on the Electronic Disclosure Information Management System (E-DIMS). I.R.C. § 6103 requests received by other IRS offices are not controlled on the E-DIMS.

The IRS is not required to track requests for return or return information from taxpayers or individuals with a material interest (such as a spouse, child, estate, etc.). Although the IRS tracks requests received by the Office of Governmental Liaison and Disclosure, requests received by other IRS offices are not tracked. As a result, we statistically sampled I.R.C. § 6103 requests received by the Office of Governmental Liaison and Disclosure. The universe of I.R.C. § 6103 requests closed by other IRS offices could not be determined or statistically sampled.

Except for the limitation described in the previous paragraph, this audit was performed in accordance with *Government Auditing Standards* during the period September 2001 through February 2002. The audit was performed by interviewing disclosure officials at the IRS Office of Governmental Liaison and Disclosure and by reviewing samples of closed FOIA, PA, and I.R.C. § 6103 cases.

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Additional Information Can Be Provided in Response to Taxpayers' Written Requests for Information

Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

The IRS did not always provide information that requesters were entitled to receive in response to their written inquiries under the FOIA, the PA, and the I.R.C. § 6103. As a result, taxpayers' rights were potentially violated and the IRS is at risk of incurring unnecessary costs associated with administrative appeals and civil litigation initiated by requesters who were improperly denied information under the FOIA.

Table 1 shows the results of the two statistically valid samples.

Table 1 - Number of Improper Withholdings in Samples

Type of Request	Size of Sample	Number of Cases With Improper Withholdings	Percentage of Improper Withholdings (Error Rate)
FOIA/PA	141	15	10.6 %
I.R.C. § 6103	131	16	12.2 %

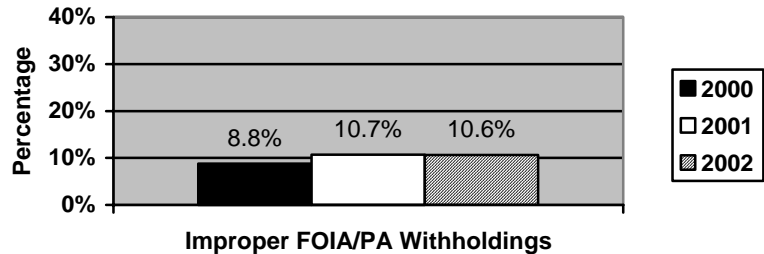
Information requested by taxpayers under the FOIA and the PA

We project, with 85 percent confidence, that the IRS improperly withheld information from requesters in 458 FOIA and PA cases where information was denied or partially denied based on I.R.C. § 6103 and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available.

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Chart 1 shows this year's results of improper FOIA/PA withholdings compared to the prior two TIGTA reviews.⁴

**Chart 1 - Comparison of 2000-2002
Audit Results - FOIA/PA**



The reasons why the IRS improperly withheld information for FOIA and PA requests remained consistent over the last 3 years. For example, Disclosure personnel did not correctly interpret the FOIA and the I.R.C. § 6103 statutes when determining the type of information that should be withheld. Another primary reason was that Disclosure personnel did not always follow internal guidelines that specifically addressed the type of information that could be provided. A third common reason was that Disclosure personnel did not always adequately research IRS databases and, as a result, did not identify information responsive to the request.

Overall, the types of information improperly withheld were similar during the past 3 years.⁵ The most common types of information improperly withheld in each of our last three reviews included the following:

⁴ *Responses to Taxpayers' Requests for Information Did Not Always Comply With the Freedom of Information Act or Internal Revenue Service Procedures* (Reference Number 2000-10-147, dated September 2000) and *The Internal Revenue Service Should Continue Taking Action to Improve Compliance With the Freedom of Information Act and Related Procedures* (Reference Number 2001-10-112, dated July 2001).

⁵ Over the last three years, the TIGTA has identified 59 cases with improper withholdings out of the 607 cases reviewed. These 59 cases had 76 instances of information being improperly withheld.

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- Miscellaneous IRS forms and documentation – (20 instances or 26.3 percent) - This includes case inventory listings and penalty assessment documents.
- Tax transcript information – (18 instances or 23.7 percent) - This includes IRS database tax account transcript data, which contained some tax information that the requester was authorized to receive.
- Employee notes and/or case history notes – (11 instances or 14.5 percent) - This includes tax examiners' and/or revenue officers' case notes documenting tax assessment and collection activities.
- Routine office documents – (8 instances or 10.5 percent) - This includes documents used to send, record, or request information, such as facsimile and phone message sheets, routing slips, and pre-addressed mailing labels.
- IRS memoranda and letters – (8 instances or 10.5 percent).

In this year's review, information in 15 of the 141 (10.6 percent) FOIA and PA cases in our random sample was improperly withheld. Some of the 15 cases had more than one reason for the improper withholding of information. These reasons included:

- In 18 instances, information was improperly withheld because the IRS did not correctly apply the FOIA statute and/or the I.R.C. § 6103. For example, in one case, the IRS improperly withheld return information based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103. Review of the withheld documents showed that the taxpayer's representative was authorized to receive the return information and the information was within the scope of the request.
- In three instances, the IRS did not conduct a proper search for records. For example, a taxpayer requested copies of information from a specific IRS computer database for tax years 1995 through 1998. The IRS replied that there were no records responsive to the

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taxpayer's request. However, review of that database showed that records for 1998 were available and should have been provided to the requester.

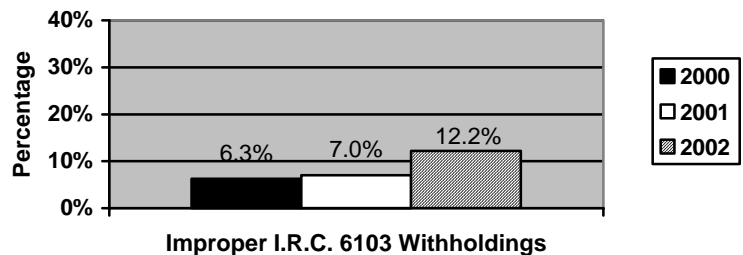
- In eight instances, the IRS did not follow Internal Revenue Manual guidelines. For example, a taxpayer requested copies of all documents relating to the audit of his return. The IRS withheld information regarding the assessment of a penalty that should have been released according to established guidelines.

Information requested by taxpayers under I.R.C. § 6103

We project, with 85 percent confidence, that the IRS improperly withheld information from requesters in 1,052 I.R.C. § 6103 cases where information was denied or partially denied or requesters were told that records could not be located.

Chart 2 shows this year's results of improper § 6103 withholdings compared to the prior two TIGTA reviews.

**Chart 2 - Comparison of 2000-2002
Audit Results - I.R.C. 6103**



Over the last 3 years, we identified three common reasons for the IRS improperly withholding information from I.R.C. § 6103 requesters. For example, we found that Disclosure personnel did not always fully address the request made when replying to the requester. In addition, the research performed to identify information responsive to the request was not always adequate. Finally, we found

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responses to I.R.C. § 6103 requests were not always reviewed by Disclosure management.

Overall, the types of improperly withheld information were similar during the past 3 years.⁶ The most common types of information improperly withheld in each of our last three reviews included the following:

- Adjusted gross income information – (13 instances or 23.2 percent).
- Filing information – (12 instances or 21.4 percent) - This includes whether a return was filed and the type of the return.
- Miscellaneous tax account information – (11 instances or 19.6 percent) - This includes penalty information, outstanding balances and payment information.

In this year's review, information in 16 of the 131 (12.2 percent) I.R.C. § 6103 cases in our random sample was improperly withheld. For example:

- In one case, a state agency requested information regarding a taxpayer's filing history for multiple years with the taxpayer's consent under I.R.C. § 6103(c). The IRS responded that it did not find any return information for the years in question, even though the taxpayer filed a joint return for those years and the records were available under the spouse's Social Security Number.
- In another case, a probation office requested a taxpayer's adjusted gross income for the past 10 years with the taxpayer's consent under I.R.C. § 6103(c). The IRS provided the adjusted gross income for 3 of the 10 years; it stated that there was no record of filing for the remaining 7 years. Research showed that the information regarding 1 of the 7 years was readily

⁶ Over the last 3 years, the TIGTA has identified 41 cases with improper withholdings out of the 508 cases reviewed. These 41 cases had 56 instances of information being improperly withheld.

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Responses to Denied, Partially Denied, or No Responsive Records Freedom of Information Act and Privacy Act Requests Can Be More Timely

available and should have been provided to the requester.

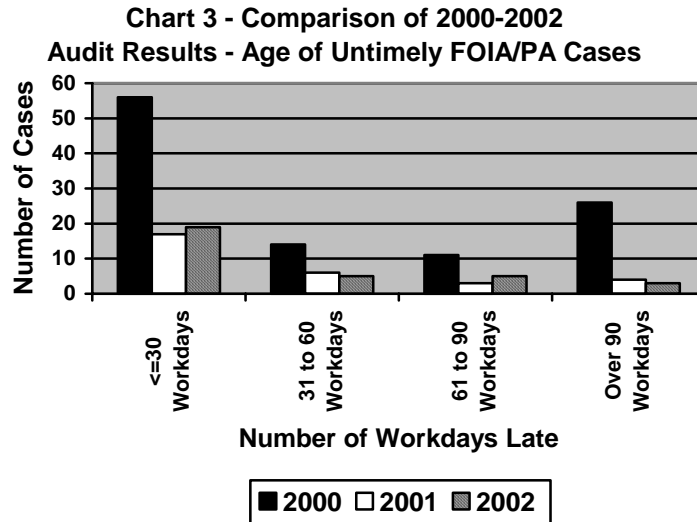
The IRS did not always respond to FOIA and PA requesters within the time periods allowed by law. We project, with 85 percent confidence, that 977 FOIA and PA requests denied under FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7), or where the IRS replied that responsive records did not exist were not processed timely during the period January 1 through June 30, 2001. As a result, requesters were not provided with responses to their requests within the time required by law. This increases the risk of requesters filing civil actions against the IRS.

Although the TIGTA is not required by the RRA 98 to report on the timeliness of processing for FOIA/PA cases, federal agencies are required to respond to requests within specified time periods. As a result, we assessed the timeliness of responses to FOIA and PA requests during our first statutory review.⁷ Because of concerns related to the timeliness of responses identified during our initial review, we included audit testing related to timeliness in our subsequent reviews to assess the IRS' progress in this area.

The IRS did not respond timely to 22.7 percent of the cases (32 of the 141) in the FOIA and PA random sample. Although the responses were not always timely, the extent of the untimeliness has improved over the last 3 years. As shown in Chart 3, the majority of untimely cases each year were less than or equal to 30 workdays late, and in our 2001 and 2002 reviews, the number of untimely cases over 30 workdays late continued to decline.

⁷ *The Internal Revenue Service Needs to Improve Its Compliance With Procedures When Processing Requests for Information Under the Freedom of Information Act* (Reference Number 2000-10-058, dated March 2000).

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The FOIA requires Federal agencies, within 20 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt of a FOIA request by the disclosure office, to respond to the person making the request. For PA requests, Federal agencies should respond within 30 days (excluding Saturdays, Sundays, and legal public holidays) after the receipt of the request by the disclosure office.

In unusual circumstances, the FOIA allows for an involuntary extension of 10 working days after the initial 20 days. Additionally, the agency may request one voluntary extension of these time periods, and if the requester agrees to the extension, the agency must notify the requester of its determination by the end of the extension period. The FOIA does not allow for multiple extension requests.

The factors contributing to the delays in responding to requests were similar to those cited in our 2000 and 2001 reports. Analysis of the 32 cases where responses were not provided timely in this year's review showed that the IRS:

- Did not respond within the statutory time period and did not request an extension of time from the requester in 12 cases.

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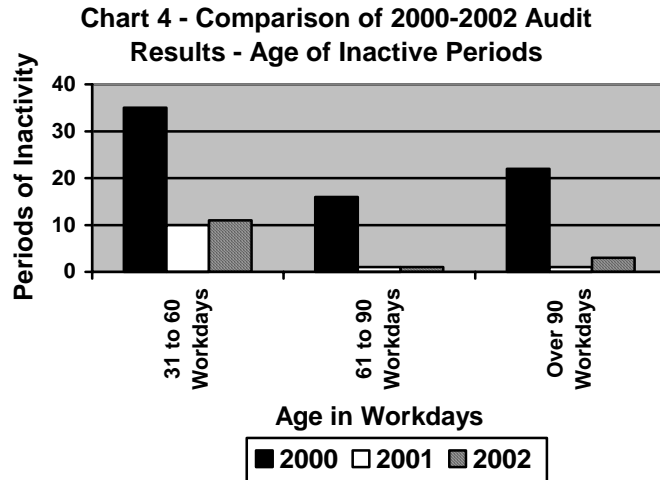
- Requested an extension from the requester but either did not request the extension timely or did not respond by the date provided for in the extension letter in 14 cases.
- Requested multiple extensions from the requester but either did not request the first extension timely or did not respond within the first extension period in six cases.

In 19 of the 32 untimely cases, there was no explanation for the delay in responding to the requester. However, two factors generally contributed to the delays in responding to the FOIA and PA requests in the remaining 13 cases. In nine cases, Disclosure personnel required information from other IRS functions (e.g., Collection, Examination, Criminal Investigation, etc.) to process the request. Due to delays in receiving the information from other IRS functions, Disclosure was not able to respond to the request timely. In the remaining four cases, Disclosure personnel needed additional time to copy and review voluminous documents, or higher priority requests were processed first.

In addition, 11 of the 32 untimely cases had long periods of inactivity (i.e., no actions were taken by Disclosure to fulfill these requests for extended periods of time). Analysis showed that these 11 cases had 1 or more periods of inactivity of at least 30 workdays.

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As shown in Chart 4, the periods of inactivity have generally decreased over the past 3 years.



In previous reports, we made several recommendations that addressed the issues contained in this report. For example, in our September 2000 report, we recommended that Governmental Liaison and Disclosure personnel responding to I.R.C. § 6103 requests should be adequately trained in researching the main IRS database containing taxpayer filing information. Management responded that they would conduct a “skills assessment” to determine the need for additional training in researching the IRS’ database. This skills assessment was originally scheduled for completion by April 1, 2001. However, management has postponed the completion date until November 1, 2002. This delay could contribute to continued inadequate research of the IRS’ database and result in more requesters being improperly denied information.

In addition, we recommended in September 2000 that management perform reviews of completed work. Management indicated that instructions related to management reviews of information requests were provided at a national meeting in November 2000. Also, management plans to update internal procedures during their next formal revision. However, management reviews can be more effectively performed based on the number of cases

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where information was improperly withheld during the last 3 years.

These prior report recommendations are still valid for the issues contained in this report. As a result, we are not making any additional recommendations. However, based on the results over the past 3 years of the types of information improperly withheld, management should re-evaluate whether the planned corrective actions to address our recommendations can be more timely and effectively implemented or if interim measures can be taken to address the continuing deficiencies. Until these actions are properly implemented, the IRS may not provide FOIA, PA, and I.R.C. § 6103 requesters with all the information they are legally entitled to within the time periods required by law.

Management's Response: Disclosure management agreed to the observations in our draft report and plans on taking the following corrective actions:

- Identify offices that may require more FOIA oversight, and provide additional technical training and increase managerial oversight in those areas.
- Develop a skill assessment plan that will allow managers to identify deficiencies and apply corrective actions that are needed to improve employee performance.
- Develop a formal Integrated Data Retrieval System training course for Disclosure personnel that will be rolled out in 2003.
- Monitor the timeliness of responses on a monthly basis.

Management's complete response is included as Appendix V.

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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective of this audit was to determine if the Internal Revenue Service (IRS) improperly withheld information requested by taxpayers in writing, based on Freedom of Information Act (FOIA)¹ exemption (b)(3), in conjunction with Internal Revenue Code (I.R.C.) § 6103 (2001), and/or FOIA exemption (b)(7) or by replying that responsive records were not available. The following tests were performed to accomplish this objective:

- I. Determined if the IRS properly adhered to statutory FOIA and Privacy Act (PA) of 1974² requirements as well as procedural requirements.
 - A. Identified 4,610 national FOIA and PA cases that were closed as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available during the period January 1 through June 30, 2001.
 1. Obtained a national extract from the Electronic Disclosure Information Management System (E-DIMS)³ that included FOIA and PA cases that were closed⁴ during the period January 1 through June 30, 2001, and identified 4,610 FOIA and PA cases that were closed as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available.
 2. Performed limited tests to verify if the E-DIMS extract included the specified time period and information requirements and identified no cases with incomplete information.

¹ 5 U.S.C. § 552 (1994 & Supp. IV 1998).

² 5 U.S.C. § 552a (1994 & Supp. IV 1998).

³ Our limited review of selected information on the E-DIMS in a prior audit [*The Treasury Inspector General for Tax Administration Can Rely Upon Data on the Electronic Disclosure Information Management System for Its Statutory Review* (Reference Number 2001-10-051, dated March 2001)] provided reasonable assurance that it was accurate and complete for the information needed to identify the population of cases for our statutory review.

⁴ We considered a case closed when Disclosure responded to the requester with a determination regarding the request for information.

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- B. Designed an attribute sample based on an 85 percent confidence level, expected error rate of 12 percent, and estimated precision of 4 percent. This sampling methodology was chosen so the TIGTA could project the number of cases with improper withholdings to the universe of cases that were partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available. The sampling plan and methodology were reviewed by a professional statistician to ensure that they were valid.
- C. Randomly sampled 141⁵ of 4,610 FOIA and PA cases that were partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available.
 - 1. Reviewed 41 of the 141 randomly selected FOIA and PA cases that were closed on the E-DIMS as partially or fully denied pursuant to FOIA exemption (b)(3), in conjunction with IRC § 6103, and/or FOIA exemption (b)(7) to determine if the decision to withhold information was appropriate and if the determination was made in a timely manner.
 - 2. Reviewed 100 of the 141 randomly selected FOIA and PA cases that were closed on the E-DIMS as no responsive records (i.e., the IRS replied that responsive records were not available) to determine if the record search was adequate and if the determination was made in a timely manner.
- D. Analyzed our audit results from the last 3 years to determine any common causes for the improper withholdings of FOIA and PA requests.
- E. Projected the number of improper withholdings in the range of 297 to 619 (6.9 percent to 14.4 percent) FOIA and PA cases that were partially or fully denied based on FOIA exemption (b)(3), in conjunction with IRC § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available. The projection was made using attribute sampling, with an 85 percent confidence level, and an error rate of 10.6 percent. As a result, the actual precision factor was 3.7 percent. A professional statistician reviewed the projection to ensure that it was valid.

⁵ 151 cases were initially selected for review. However, 6 cases were miscoded and did not fall under the scope of the review, and 4 cases were not reviewed because the files could not be located or did not contain adequate documentation. Therefore, the final sample size was 141 cases.

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- F. Projected the number of untimely determinations in the range of 758 to 1,196 (17.6 percent to 27.8 percent) FOIA and PA cases that were partially or fully denied based on FOIA exemption (b)(3), in conjunction with IRC § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available. The projection was made using attribute sampling, with an 85 percent confidence level, and an error rate of 22.7 percent. As a result, the actual precision was 5.1 percent. A professional statistician reviewed the projection to ensure that it was valid.
- II. Determined if Disclosure offices adhered to legal requirements when denying written requests received from taxpayers under I.R.C. § 6103⁶ (as opposed to the FOIA or the PA).
 - A. Obtained a national extract from the E-DIMS and identified 19,722 I.R.C. § 6103 (c) and (e) requests received from taxpayers or their designees that were closed during the period January 1 through June 30, 2001. Limited tests were performed to determine if the E-DIMS extract included the specified time period and information requirements.
 - B. Designed an attribute sample based on an 85 percent confidence level, expected error rate of 10 percent, and estimated precision rate of 4 percent. This sampling methodology was chosen because it would allow us to project the number of cases with improper withholdings to the universe of closed I.R.C. § 6103 (c) and (e) requests where information was partially or fully denied or requesters were told that records were not available. The sampling plan and methodology were reviewed by a professional statistician to ensure that they were valid.
 - C. Initially randomly sampled 400 of the 19,722 I.R.C. § 6103 (c) and (e) closed cases. Reviewed only the first 300 cases sampled to obtain the required number of cases to statistically project our results.
 - 1. Determined that 131 of the 300 (43.7 percent) randomly sampled and reviewed cases included instances where information was partially or fully denied or requesters were told that the records were not available.
 - 2. Based on an initial analysis of the 300 randomly sampled cases, we estimated that the population of 19,722 closed I.R.C. § 6103 (c) and (e) requests contained 8,612⁷ requests where information was partially or fully denied or requesters were told that records were not available.

⁶ The scope of this test included only I.R.C. § 6103 (c) and (e) requests.

⁷ See calculation on page 20.

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- D. Reviewed the 131 cases where information was partially or fully denied or requesters were told that records were not available to determine if the decision to withhold the information based on I.R.C. § 6103 was appropriate.
- E. Analyzed our audit results from the last 3 years to determine any common causes for the improper withholdings of I.R.C. § 6103 requests.
- F. Projected the number of improper withholdings in the range of 697 to 1,407 (8.1 percent to 16.3 percent) I.R.C. § 6103 (c) and (e) requests where information was partially or fully denied or requesters were told that records were not available. The projection was made using attribute sampling, an 85 percent confidence level, and an error rate of 12.2 percent. As a result, the precision factor was 4.1 percent. A professional statistician reviewed the projection to ensure that it was valid.

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Appendix II

Major Contributors to This Report

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Appendix III

Report Distribution List

Commissioner N:C
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Office of Management Controls N:CFO:F:M
Director, Legislative Affairs CL:LA

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Appendix IV

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to the Congress.

Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 458 responses to Freedom of Information Act (FOIA)¹ or Privacy Act (PA) of 1974² requests where information was improperly withheld (see page 3).

Methodology Used to Measure the Reported Benefit:

This attribute sample was randomly selected from the universe of FOIA and PA requests that were closed nationally during the period January 1 through June 30, 2001, as: 1) a full or partial denial with either FOIA exemption (b)(3), in conjunction with Internal Revenue Code (I.R.C.) § 6103 (2001), and/or FOIA exemption (b)(7) cited as one of the reasons for withholding information or 2) a no responsive record case.

We arrived at the estimate by:

- Multiplying the number of requests closed as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available by the percentage of cases that were miscoded, could not be located, or did not contain adequate documentation in the sample.
$$4,610 * 10/151 = 305 \text{ cases}$$
- Subtracting the estimated number of miscoded cases in the universe from the number of requests closed as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available.
$$4,610 - 305 = 4,305 \text{ cases}$$
- Multiplying the estimated number of requests closed as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or

¹ 5 U.S.C. § 552 (1994 & Supp. IV 1998).

² 5 U.S.C. § 552a (1994 & Supp. IV 1998).

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where the IRS replied that responsive records were not available (adjusted for the percentage of miscoded, missing, and inadequate documentation cases in the sample) by the error rate of cases reviewed. A case was considered an “error” if the IRS improperly withheld information that was available and could have been released under the FOIA.

$$4,305 * 10.6 \text{ percent}^3 = 458 \text{ cases}$$

Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 1,052 responses to I.R.C. § 6103 requests where information was improperly withheld (see page 6).

Methodology Used to Measure the Reported Benefit:

This attribute sample was randomly selected from the universe of I.R.C. § 6103 (c) and (e) requests that were closed nationally by disclosure offices during the period January 1 through June 30, 2001. Disclosure offices are not required to input a disposition code showing how I.R.C. § 6103 cases are closed (granted, denied, etc.). Therefore, the majority of these cases did not include a disposition code.

The TIGTA estimated the size of the universe by:

- Identifying 19,722 closed I.R.C. § 6103 (c) and (e) requests.
- Randomly reviewing 300 of these cases to estimate the universe of denied, partially denied, or no responsive record cases closed during the period January 1 through June 30, 2001.
- Multiplying the total number of closed requests in the audit universe by the percentage of cases in the sample where information was partially or fully denied or taxpayers were told that records were not available (131 of 300).

$$19,722 \text{ cases} * 43.7 \text{ percent} = 8,612 \text{ cases}$$

- Multiplying the estimated universe of cases where information was partially or fully denied or taxpayers were told that records were not available by the error rate for the cases reviewed (12.2 percent). A case was considered an “error” if the IRS improperly withheld information from the requester.

$$8,612 \text{ cases} * 12.2 \text{ percent}^4 = 1,052 \text{ cases}$$

³ Subject to rounding.

⁴ Subject to rounding.

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Type and Value of Outcome Measure:

- Taxpayer Rights – Potential; 977 FOIA and PA requests partially or fully denied under FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records did not exist were not processed timely during the period January 1 through June 30, 2001 (see page 8).

Methodology Used to Measure the Reported Benefit:

This attribute sample was randomly selected from the universe of FOIA and PA requests that were closed nationally during the period January 1 through June 30, 2001, as: 1) a full or partial denial with either FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) cited as one of the reasons for withholding information or 2) a no responsive record case.

We arrived at our estimate by:

- Multiplying the number of requests closed as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available by the percentage of cases that were miscoded, could not be located, or did not contain adequate documentation in the sample.

$$4,610 * 10/151 = 305 \text{ cases}$$

- Subtracting the estimated number of miscoded cases in the universe from the number of requests closed as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available.

$$4,610 - 305 = 4,305 \text{ cases}$$

- Multiplying the estimated number of requests closed as partially or fully denied based on FOIA exemption (b)(3), in conjunction with I.R.C. § 6103, and/or FOIA exemption (b)(7) or where the IRS replied that responsive records were not available (adjusted for the percentage of miscoded, missing, and inadequate documentation cases in the sample) by the percentage of untimely responses. The following calculation was made to arrive at the estimate:

$$4,305 * 22.7 \text{ percent}^5 = 977 \text{ cases}$$

⁵ Subject to rounding.

**Actions Should Continue to Be Taken to Improve Compliance With
the Freedom of Information Act and Related Procedures**

Appendix V

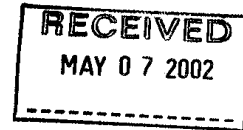
Management's Response to the Draft Report




CHIEF COMMUNICATIONS
AND LIAISON

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

MAY - 2 2002



**MEMORANDUM FOR TREASURY INSPECTOR GENERAL FOR
TAX ADMINISTRATION**

FROM: David R. Williams 
Chief, Communications and Liaison

SUBJECT: Draft Report - Actions Should Continue to be Taken to
Improve Compliance with the Freedom of Information Act
and Related Procedures (Audit # 200110049)

Thank you for your 2001 review of the IRS' Freedom of Information Act (FOIA) program. Because the IRS is already engaged in a wide-ranging revamp to strengthen our FOIA program, your report will bolster this effort with additional recommendations that we will incorporate.

As you know, the IRS is committed to improving its FOIA program. To that end, during the last eighteen months, we have:

- Developed and implemented a case management system, the Electronic Disclosure Information Management System (E-DIMS). This system electronically documents status and historical information that allows us to track the timeliness of responses.
- Established balanced measures for the FOIA program to monitor timeliness and accuracy of requests.
- Established a peer review team that independently monitors program activities.
- Developed a comprehensive training program that includes instruction on how to properly document case histories on E-DIMS, conduct complete research on IDR\$, and accurately apply the FOIA statute.
- Examined the feasibility of automating the entire FOIA process so that we can more effectively manage the workload.

We agree with your findings and believe that the activities listed above demonstrate our willingness to address the issues. You have asked us to reevaluate whether the planned corrective actions can be implemented more timely or if interim measures can be taken. The answer is yes, and we will make every effort to do so. The report may be released in full under the Freedom of Information Act.

Actions Should Continue to Be Taken to Improve Compliance With the Freedom of Information Act and Related Procedures

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Finding #1

Information requested by taxpayers in FOIA, Privacy Act (PA), and IRC 6103 requests processed under the FOIA was improperly withheld primarily because the IRS did not correctly interpret the FOIA or IRC statutes, or failed to follow internal guidelines that specifically address the type of information that could be provided. Also, IRS did not always adequately research IDRS and therefore failed to conduct a proper search for the responsive records.

Recommendation

The IRS should continue taking action to ensure that Freedom of Information Act (FOIA), Privacy Act (PA), and Internal Revenue Code (IRC) 6103 requesters are provided with all the information they are entitled to when responding to their written requests.

Corrective Actions

Besides the activities noted above, we are in the process of implementing four initiatives that will further assist in addressing this issue.

1. The Disclosure Peer Review Team will work to identify offices that may require more FOIA oversight. This assessment will be compared with the TIGTA sample review analysis.
2. Once the specific areas of weaknesses are identified, we will provide additional technical training and increase managerial oversight in those areas.
3. We are developing a skill assessment plan that will allow managers to identify deficiencies and apply corrective actions that are needed to improve employee performance.
4. We are developing a formal IDRS training course for Disclosure personnel that will be rolled out in 2003.

Finding #2

The IRS did not always respond to FOIA and PA requesters within the time periods allowed by law. The findings show a number of cases where the IRS failed to issue a determination letter within the statutory period and either failed to send a letter requesting a voluntary extension of time, the voluntary extension letter was not sent timely, or failed to respond within the extended time period.

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Recommendation

Responses to denied, partially denied and no responsive records FOIA and PA requests need to be more timely.

Corrective Actions

To address this issue we plan to monitor the timeliness of responses on a monthly basis. This will help us to better identify where the problem areas are and to address them immediately.

I appreciate your continued assistance in identifying issues with the FOIA program. If you have any questions, please contact me at (202) 622-5440 or Tom Marusin, Acting Deputy Director, Governmental Liaison & Disclosure at (202) 622-6200.